

(4)
No. 87-7023

Supreme Court, U.S.

FILED

DEC 19 1988

JOSEPH E. SPANIO, JR.
CLERK

In The
Supreme Court of the United States
October Term 1988

TYRONE VICTOR HARDIN,

Petitioner,

v.

DENNIS STRAUB,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOINT APPENDIX

DOUGLAS R. MULLKOFF
(Appointed by this Court)
402 W. Liberty
Ann Arbor, Michigan 48103
(313) 761-8585

Counsel for Petitioner

LOUIS J. CARUSO
Solicitor General
State of Michigan
763 Law Building
525 W. Ottawa Street
Lansing, Michigan 48913
(517) 373-1124

Counsel for Respondent

PETITION FOR CERTIORARI FILED MARCH 16, 1988
CERTIORARI GRANTED OCTOBER 11, 1988



INDEX

	Page
Chronological list of Relevant Docket Entries.....	1
Plaintiff's complaint, filed December 24, 1986	2
Order Dismissing Complaint, filed February 26, 1987.....	26
Judgment from District Court Dismissing Com- plaint February 26, 1987	28
Motion to Vacate Judgment of Dismissal and Memorandum of Law in Support filed March 16, 1987.....	29
Order Denying Motion to Vacate Judgment filed May 21, 1987.....	33
Opinion and Order of Court of Appeals affirming District Court's dismissal of complaint.	34
Court of Appeals Order Denying Petition for Rehearing	36
Order of the Supreme Court of the United States granting certiorari and leave to proceed in forma pauperis, October 11, 1988	37
Order of the Supreme Court, etc. appointing counsel.....	38



**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

December 29, 1986 – Order Granting Plaintiff's Petition to Proceed in Forma Pauperis.

December 29, 1986 – Civil Rights Complaint accepted for filing.

February 26, 1987 – Order and Judgment entered dismissing Complaint.

March 16, 1987 – Plaintiff's Motion to Vacate the Order of 2/26/87, and Memorandum in support filed.

May 21, 1987 – Order entered denying Plaintiff's Motion to Vacate.

May 28, 1987 – Plaintiff's Notice of Appeal from orders dated 2/26/87 and 5/21/87 filed.

December 18, 1987 – Opinion and Order of the Court of Appeals for the Sixth Circuit.

February 18, 1988 – Order Denying Petition for Rehearing by Court of Appeals for the Sixth Circuit.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
133 U.S. COURTHOUSE
DETROIT, MICHIGAN 48226

PRISONER CIVIL COMPLAINT FORM
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983

PLAINTIFF(S)

<u>TYRONE VICTOR HARDIN</u>	<u>#136097</u>
(Plaintiff's Name)	(Prison Number)

<u>Huron Valley Men's Facility, 3201 Bemis Rd.,</u>	
<u>Ypsilanti, MI</u>	<u>48197</u>
(Place of Confinement)	(Zip Code)

List any additional Plaintiff(s), Prison Number(s), and the Current Place of Confinement for each Plaintiff.

DEFENDANT(S)

YOU MUST FURNISH NAME AND COMPLETE CURRENT ADDRESS FOR EACH NAMED DEFENDANT

• DENNIS M. STRAUB, Superintendent Northside
Complex, 4000 Cooper St. Jackson, Michigan 49204

FILING INSTRUCTIONS

This packet includes a complaint form. To start a legal action, you **MUST FILE AN ORIGINAL AND ONE COPY OF THE COMPLAINT** and any attachments (the original and copy are required by the Court). **FOR EACH DEFENDANT THAT YOU WISH SERVED BY THE U.S. MARSHAL, YOU MUST FURNISH ONE ADDITIONAL COPY OF THE COMPLAINT AND ANY ATTACHMENTS.**

Your complaint must be either *typed or legibly hand-written*. Your complaint must be submitted on 8 1/2" x 11" paper. You must sign the complaint and declare under penalty of perjury that the facts are correct. If your complaint exceeds the space allotted here, you may use blank paper, BUT, it also must be 8 1/2" x 11".

YOUR COMPLAINT MAY BE BROUGHT IN THIS COURT ONLY IF ONE OR MORE OF THE NAMED DEFENDANTS IS LOCATED WITHIN THIS DISTRICT.

You must file a separate complaint for each claim that you have, unless they are all RELATED to the same incident or issue.

YOU MUST FURNISH THE CORRECT NAME AND COMPLETE ADDRESS FOR EACH DEFENDANT.

FILING FEE

The filing fee for a civil action is \$120.00 and must accompany the complaint.

IF YOU ARE UNABLE TO FURNISH THE FILING FEE AND SERVICE COSTS, YOU MUST COMPLETE THE ATTACHED APPLICATION TO PROCEED IN FORMA PAUPERIS. BE CERTAIN THAT YOU SIGN IT. AN OFFICIAL OF THE INSTITUTION IN WHICH YOU ARE INCARCERATED MUST INDICATE IN THE APPLICATION THE AMOUNT OF MONEY AND SECURITIES ON DEPOSIT TO YOUR CREDIT IN ANY ACCOUNT IN THE INSTITUTION. THE PRISON OFFICIAL MUST ALSO SIGN THE FORM. If your prison account exceeds \$150.00, you must pay the filing fee and service costs.

REQUIRED FACTS

You are required to give *FACTS*. This complaint *SHOULD NOT CONTAIN LEGAL ARGUMENTS OR CITATIONS*.

FAILURE TO COMPLY WITH ALL OF THESE INSTRUCTIONS WILL RESULT IN UNNECESSARY DELAYS IN FILING YOUR CASE.

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same facts in this action, or otherwise relating to your imprisonment?

YES ☒

NO ☐

- B. If your answer is "YES", describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another blank sheet of paper, (8 1/2" x 11").

- C. Parties to this previous lawsuit:

Plaintiff(s): Ronald T. Wilder et al.

Defendant(s): Robert Brown Jr.

2. Court (If federal court, name the district. If state court, name county): Eastern District of Michigan

3. Docket Number (Case Number): 86-72971
4. Judge's Name: COOK
5. Disposition (dismissed, appealed or still pending): Still pending I assume
6. Approximate filing date: 7-10-86

Approximate disposition date: unknown

II. ADMINISTRATIVE REMEDIES

- A. Is there a prison grievance procedure in your institution?

YES ☒

NO ☐

- B. Did you present the current facts in the grievance procedure?

YES ☒

NO ☐

- C. If YES:

1. What steps did you take?

Sent the grievance to the above-mention

Defendant and he never responded to it.

2. What were the results?

Never acknowledge receipt of any answer.

- D. If NO, explain why not: _____

E. If no grievance procedure, did you complain to the authorities?

YES []

NO []

F. If your answer is YES:

1. What steps did you take?

2. What was the result?

III. STATEMENT OF FACTS

State here, as BRIEFLY as possible, the FACTS of your case. Describe how each defendant is involved. Include the names of other persons involved, dates and places. *DO NOT GIVE ANY LEGAL ARGUMENTS OR CITE ANY CASES OR STATUTES.* If you intend to allege a number of related claims, NUMBER and set forth each claim on a blank 8 1/2" x 11" sheet(s) of paper and attach.

1) On 10/24/80 Plaintiff was delivered to the custody State Prison Southern Michigan, Reception & Guidance Center.

2) Upon entry Plaintiff was placed on "000" Administration Segregation.

When Plaintiff inquired why he has being assigned to Administration status, he was informed that it was due to his alleged County jail misconduct reports.

4) At no time did Plaintiff receive any type of an Administrative hearing as mandated R 791.4405, which states: Administrative segregation may be imposed only

when: "(a) A resident demonstrates inability to be managed with group;

(b) A resident needs protection from other prisoners (sic); (c) A resident is a serious threat to physical safety of staff or other prisoners; or the good order of the facility; (d) A resident is a serious escape threat; (2) A resident shall be afforded an opportunity for a hearing pursuant to Rule 791.3315 before being classified to administrative segregation (sic); however, a resident may be temporarily held in segregation status pending a hearing upon order of the institution head, or at the residents' request. This period may not exceed four (4) weekdays."

5) Plaintiff was denied his paramount right to a formal hearing, in short Plaintiff was rail-roaded. See exhibit (A) hereto annexed and filed herewith, where it states Mr. Hardin has been lodged in "000" section of R&GC since his arrival and shall remain there until (sic) his departure."

6) Plaintiff spent approximately 180 days in administrative segregation without having been afforded (sic) any type of hearing, above all Plaintiff at no time broke any rules while at R&GC that would warrant being placed in segregation. See exhibit (F) where it states: "Due to the problems encountered at the county (sic) jail, Mr. Hardin is being placed in a Toplock cell in R&GC."

7) At no time during Plaintiff's confinement in segregation did he once receive any weekly shower, or yard, or out of the receptacle recreation whatsoever. In short Plaintiff was forced (sic) to remain in his cell 24 hrs. a day (sic) everyday.

8) Around January 1981 Plaintiff was placed in 5-Blk. detention cell at SPSM where he remained until early March 1981 which he was returned back to the Kent

County Jail on writ to await trial. It is noted that 5-Blk. was at the time known as the hole and is a far more server (sic) punishment. See Plaintiff's exhibit (D);(B);(C);(E) hereto annexed and filed herewith.

10) Plaintiff returned back to R&GC off writ on May 14, 1981 and was once again placed on Administrative Seg. and subsequently returned back to 5-Blk. and and (sic) placed in a detention cell until July 15, 1981 whereupon he was transferred to Marquette Branch Prison.

11) These are only one of many proceduer (sic) due process violations that go on daily behind the walls of Jackson Prison R&GC, and based upon information and belief they are still being employed up until this date.

12) Whenever a resident is classified to Administration Seg. Form CSO-447 must be used, which is call (sic) a Notice of Intent, No such Form was ever used, which the records will clearly reflect.

13) Defendant Straub was at which time responsible for the overall operation of R&GC and is the individual responsible for approving said segregation and maliciously violating Plaintiff's rights to procedures due process.

14) Defendant Struab (sic) is being sued in his personal and individual capacity for this paramount right to procedure due process, in which he vioated (sic).

15) The acts and omissions described herein constitute a violation of the 5th, 8th and 14th amendment of the Constitution of the United States.

16) Plaintiff has no complete or adequate knowledge of the law and has had to pay prison writ-writers (sic) in order to bring this action into this Honorable Court.

17) Taken all the factors into consideration in their totality the reader is only left with one conclusion and that being that Plaintiff was at all times denied his rights guaranteed to him under the Const. of the United States to equal protection of the law, To be free from cruel and unusual punishment and Due process of law.

WHEREFORE for all the foregoing reasons stated herein it is prayed that this Honorable Court GRANT the relief sought.

Respectfully Submitted,
/s/ T. Victor Hardin

V. RELIEF

(State BRIEFLY and EXACTLY what you want the Court to do for you. MAKE NO LEGAL ARGUMENTS – CITE NO STATUTES.)

Award Plaintiff the sum of \$150.00 For cruel and unusual punishment; For the illicit segeragation (sic) which Plaintiff was subjected to; Mental anguish; Rights deprived of; Damages and Compensation. And Defendant Straub be ordered to also pay to Plaintiff the sum of \$150,000.00.
And that this Honorable Court appoint counsel to represent Plaintiff.

I declare, under penalty of perjury, that the foregoing is true and correct.

T. Victor Hardin

YOUR SIGNATURE

12-11-86

DATE

IF YOU SHOULD EXPERIENCE DIFFICULTY IN COMPLYING WITH ALL OF THESE INSTRUCTIONS, PLEASE CONTACT:

CLAY BURCH
THE CORRECTIONAL OMBUDSMAN
4TH FLOOR
FARNUM BUILDING
125 W. ALLEGAN
LANSING, MICHIGAN 48913

**APPLICATION TO PROCEED IN FORMA PAUPERIS,
SUPPORTING DOCUMENTATION & ORDER**

DISTRICT	
<hr/> United States District Court	
CASE TITLE	DOCKET NO.
Tyrone Victor Hardin v. Dennis M. Straub	<hr/> MAGISTRATE CASE NO.

I, _____, declare that I am the (check appropriate box)

☒ petitioner/plaintiff ☐ movant (filing 28
U.S.C. 2255 motion)

☐ respondent/defendant ☐ _____
other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes [] No [x]
 - a. If the answer is "yes," state the amount of your salary or wages per month and give the name and address of your employer. (list both gross and net salary)

- b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

Last employment date: 5/23/85 wages: approximately 21.00 dollars per month.

2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or other form of self-employment Yes [] No [x]
 - b. Rent payments, interest or dividends? Yes [] No [x]
 - c. Pensions, annuities or life insurance payments? Yes [] No [x]
 - d. Gifts or inheritances? Yes [] No [x]
 - e. Any other sources? Yes [] No [x]

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings account?

Yes [] No [x] (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes [] No [x]

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

Wife and four children and I contribute all of my wholly earning toward their support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-11-86
Date

T. Victor Hardin
Signature of Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant herein has the sum of \$ Tyrone Hardin #136097 on account to his credit at the \$0.83 institution where he is confined. I further certify that the applicant likewise has the following securities to his credit according to the records of said institution:___

 Jan M. Penn

 Date 12-22-86
 Authorized Officer of Institution

 ORDER OF COURT

The application is hereby
denied

The application is hereby
granted. Let the applicant
proceed without prepay-
ment of cost or fees or the
necessity of giving security
therefor.

 United States Judge Date

 United States Judge Date
or Magistrate

 EXHIBIT (A)

Number C-136097 Name HARDIN, TYRONE VICTOR

Date 11-10-80

Reproduced by the State of Michigan

Reproduced by the State of Michigan

 OPINIONS BY PROCESSOR

Tyrone Victor Hardin C-136097 was received in R&GC as a Parole Violator with a new sentence on 10-24-80. Mr. Hardin is currently charged with Assault Less than Murder and has a sentence of 6 1/2-10y and is also charged

with Possession of Firearm in Felony and has a 2y sentence further is charged with Carrying a Concealed Weapon and has a sentence of 2 1/2-5y. Mr. Hardin was on parole at the time this offense occurred for Assault to Armed Robbery and it should also be noted that Mr. Hardin escaped from juvenile institutions approximately four times and also escaped from a Correction Center in 1974. Mr. Hardin stated at the time of the interview and it is verified in the PSI that he is in fairly good health, with the exception of having blackouts from a head injury received several years ago.

Mr. Hardin made no comment at the time of the interview or when questioned as to his guilt in the instant offense. However, the facts as contained in the PSI stated that Mr. Hardin does not agree with the facts of the case as presented. Mr. Hardin says he was merely a passenger in the suspect vehicle, and had nothing to do with the robbery that occurred. Mr. Hardin has a long and extensive drug history however, has no problem with alcohol. As previously stated Mr. Hardin was approximately 12 years of age at the time of his arrest, and since has accumulated a long line of felony convictions. Mr. Hardin is a 25 year old black male who has never been married. It should be noted that during his stay in the county jail Mr. Hardin incurred many misconduct reports, some of the most serious being assault on guards with urine, threatening behavior, attempted assault etc. It should also be noted Mr. Hardin was found to be in possession of a homemade pistol. The pistol was constructed of soap and was thought to be made for use in the courtroom, as rumor would have it this individual was going to attempt an escape. It should also be noted that Mr. Hardin has a

poor institutional record on his prior incarceration having received many misconducts of varying types. Mr. Hardin refused to take an A.G.E. test when received in R&GC, however it is noted in his prior institutional record that he received a GED at SPSM during a prior incarceration. Mr. Hardin has a very sporadic work record in the community and was unemployed the majority of the time. It should also be mentioned that Mr. Hardin has a long drug history dating back many years, and at the time of the interview stated that he continues to be addicted. R&GC recommendations for Mr. Hardin are Routine Work Assignment coupled with a College Program, providing he can prove himself intellectually capable of handling college level work, and Drug Counseling Program of some type. Mr. Hardin has been referred to R&GC psychological staff for evaluation due to the above mentioned misconducts in the county jail and also due to the fact that he threatened to hang himself while he was in the county jail. Hopefully, more recommendations concerning Mr. Hardin will be forthcoming upon completion of the psychological report. For the good order and security of the institution, Mr. Hardin has been lodged in "000" section of R&GC since his arrival and shall remain there until his departure. From all indications Mr. Hardin constitutes a continuing threat to himself and others, and this should be taken into account upon placement.

Again it is stressed that this individual has been placed on "000" section of R&GC since his arrival, therefore has not incurred any misconducts, and also it is being stressed this individual was involved in many types of misconducts in the county jail. Mr. Hardin is currently

viewed as a management problem and from all indications will continue to be.

William Bailey
Acting Transcase Processor

Consultant: Thomas Martin-Yannitelli, ACSW
Clinical Social Worker

EXHIBIT (B) and (C)

MICHIGAN DEPARTMENT OF CORRECTIONS
Reception & Guidance Center

PSYCHOLOGICAL REPORT

NAME	NUMBER	INTERVIEW
HARDIN, TYRONE VICTOR	C136097	DATE
		11/12/80
OFFENSE	TERM	AGE
Aslt Less Murder, CCW &	6 1/2-10y,	25
Poss Firearm in Fel 2 Cts	2 1/2-5y & 2y ea.	

TYPE OF INTERVIEW:	<input checked="" type="checkbox"/> Intake Diagnostic
	<input type="checkbox"/> Parole Board Pre-Release
	<input type="checkbox"/> Reduced Custody Screening
	<input type="checkbox"/> Discharge Evaluation
	<input type="checkbox"/> Crisis Intervention Contact
	<input type="checkbox"/> Other (Specify) _____

TESTS ADMINISTERED:	<input type="checkbox"/> MMPI	<input type="checkbox"/> Rorschach
	<input type="checkbox"/> DAP	<input type="checkbox"/> TAT
	<input type="checkbox"/> B-G	<input type="checkbox"/> Other (Specify) _____
	<input type="checkbox"/> ISB	
	<input type="checkbox"/> CPI	<input type="checkbox"/> None

REASON FOR REFERRAL: Mr. Hardin was referred to the undersigned by the Deputy, Mr. Dennis Straub, for a

current psychological evaluation as the resident was returned to this institution as a parole violator, having incurred a serious crime of Assault Less Murder while on parole

CLINICAL IMPRESSIONS: It was reported that Mr. Hardin is the third of eight children born to the union of his natural parents who marriage remained intact until the father died in 1970. His father described as being "shell shocked" as a result of his war experience, and also as having a serious drinking problem prior to his death. His mother is reportedly extremely obese and because of her immobility, has been quite unable to exercise any control over the resident's behavior or activities. She was also described as being mentally disturbed. The resident's juvenile criminal history started shortly after the family moved to Grand Rapids in 1966 when the resident was about 12 years old. The resident left home shortly after his father's death in 1970 and by this time he was well entrenched in an antisocial lifestyle. He has literally had a very extensive juvenile criminal history and in accordance to his adult record, he has only spent in the community a few months over the past seven years. His lengthy criminal history consisted mainly of property and assaultive offenses. It should be pointed out that this resident has developed a pattern of committing robberies while either on escape or parole status. He was also admittedly involved in the use of marijuana and barbiturates (sic) beginning in 1971 which led into his heroin habit. It should be pointed out that while incarcerated at the Kent County Jail, he made a gun out of black soap that was to be used in his attempt to escape from the court. Also, another gun of a similar nature was found on

another inmate in jail, believed to be made by the same person. In addition, Mr. Hardin refused to be locked up and flooded his cell block. He also threatened the jail guards, attempted to fight them, throwing urine at them and broke a glass light. While he was placed in the sick bay at the county jail he attempted to hang himself.

It should be noted at the onset that the present psychologist has had several interviews with Mr. Hardin in his "000" cell, and in one of these interviews Mr. Hardin gave as his reason for refusing medical examination that he belonged to a religious group called "Saint Worshipers" but when asked, Mr. Hardin was not able to mention the religious leader as well as the place of gathering. However, after he was told that he would probably have to be locked up in 5 Block to protect the other residents from any possible contagious disease, Mr. Hardin appeared to change his mind by indicating his willingness to be medically examined. In addition, Mr. Hardin gave the impression that he has become both street wise and prison wise possessing a considerable amount of manipulative skills. As further example of his manipulative ability, with the assistance of his attorney, he petitioned the court for a psychiatric evaluation stating that he was displaying erratic behavior, and may not be able to competently aid his attorney in his defense and, furthermore, may have been legally insane at the time of the present offense. However, the center for forensic psychiatry in Ann Arbor declared him as feigning mental illness and that he was quite capable of answering all questions appropriately. Further Mental Status Examination by the present psychologist has revealed no associative or affective disturbances as Mr.

Hardin's thinking and reasoning processes were coherent, rational and relevant, his affect was appropriate all the time to the topics and circumstances at hand. The range of his emotional expressions was also within the normal limits, with no indication of any exaggerations such as flatness or blunting. His memory for instant and distant events was intact, except when he deliberately attempted to distort or block it. He was alert and oriented as to person, time and place, and no experiences of a hallucinatory or delusional nature were elicited during the interview. There was further no evidence of any active psychotic processes.

Besides medical examination, Mr. Hardin also refused testing. However, a study of his previous test results has revealed at least two predominant features in his personality, sociopathic proclivities and extreme immaturity with narcissistic and hedonistic tendencies. As a result, he is likely to be primarily in search for immediate satisfaction of his desire and to have difficulties handling extreme pressures or stress. Under these circumstances, he is very likely to act impulsively without considering the consequences of his actions. If one takes into consideration Mr. Hardin's early family background, in which the father was incapacitated and a heavy drinker, and the mother had no control over him in any way, The development of the sociopathic tendencies and his immature personality should come as no surprise. His association at first with a negative peer group, and later with people of questionable reputations, has given the content to his existing sociopathic tendencies and immaturity. It is interesting to point out that in a structured setting with adequate supervision and control, Mr. Hardin appears to

have been able to perform well. This has been exemplified during his prison terms at the Michigan Reformatory, SPSM, and the Michigan Training Unit. For example, at the Reformatory he was regarded as a highly responsible worker in the Furniture Factory. At the SPSM he worked in the License Plates and completed his GED. At the MTU, he held a responsible position in the Food Service department and maintained a clear conduct record. During his incarceration he also completed Narcotics Anonymous and Alcoholics Anonymous Programs, and was regularly involved in the Jaycees. These were probably the reasons that qualified him for parole. As has been mentioned, within the last 12 years he lasted only three months in the community. At the present time, he has indicated his interest in pursuing more education at a business college and in the institutional work routine.

RECOMMENDATIONS: On the basis of Mr. Hardin's personality characteristics, his extensive criminal record, and his present interests, it is recommended that he be involved in the institutional educational programs. It is also recommended that he be involved in a Group Psychotherapy for Impulse Control at a later date during his incarceration.

Pek-Sin Jo, M.A.
Clinical Psychologist

EXHIBIT (D)

Number C-136097 Name HARDIN, TYRONE VICTOR
Date

CLINICIAN'S OPINIONS

ADDENDUM:

This Classification Committee notes that after reading the Sheriff's Questionnaire that Mr. Hardin had an extremely poor county jail adjustment. He was cited for "swearing at the guards, flooding cell block, refusing to lock up, threatening to fight guards, being in possession of a tattooing needle, throwing urine on guards as well as inmates, breaking glass lights, and possession of a home-made gun." This Committee would note that the home-made gun found was to be used at the court in an attempt to escape. Also, according to the Sheriff's Questionnaire, another homemade gun out of soap was found in the possession of another inmate of which was believed to have been made by Hardin also. Further reports indicate that this gun was made out of black soap and hid inside a book of which had been cut out so as to insert this gun in. At the time of Mr. Hardin's classification, he reported that he had enemies by the name of Eddie Yarbrough, #137269, who is located at MIPC; Paul Harris, #121394, who is located at the Marquette Branch Prison, and Larry Bowlson, #133043, who is also located at Marquette. Reviewing Mr. Hardin's previous institutional adjustment, we note that he was located at Jackson for a short period between 6-77 until that of 4-78. During that period at SPSM Complex, it would appear that Mr. Hardin made adequate adjustment. His Deputy File was reviewed by this committee prior to this classification. In view of the above mentioned factors, Mr. Tyrone Hardin is being classified as SPSM Maximum to be placed in 5 block until such time as he can be viewed by the Assistant Deputy in charge of Security and Custody, Mr. Dwayne Sholes.

Dennis M. Straub
Deputy Superintendent - R&GC

ASIC INFORMATION

C136097 HARDIN, TYRONE VICTOR N06
Aslt Less Murder 64-10 10-24-80
Poss Firearm in Fel 2y MW55n
Kent

C136097 HARDIN, TYRONE VICTOR N06
CCW 24-5 10-24-80
Poss Firearm in Fel 2y MW55n
Kent

CLASSIFICATION COMMITTEE:

MANAGEMENT

CRITERIA:

☒ Pending Charge/Hold/Probation Violation

Kent City Robbery Armed
Docket 79-155532FY

History of ☐ Arson ☐ Drug Sales
☐ Professional Criminal ☐ Involved in Organized Crime

Medical-Psychological Considerations

Physical Problem Complaint Back Aches

Special Diet/Medication (type) None

Severe Psychological Problem/Hospitalization Past

Suicide Potential/Chronic Depression Past

Escape History ☐ None

☐ Adult Institution ☐ Close ☐ Medium ☐ Minimum

☒ Juvenile Institution 4 times

☐ AWOL

☒ Other (specify) Connections Center 1974

Policy Psych Case ☐ ☒ ☐ ☐

Mental Hospital Within 2 Years ☐ Adjustment Problems ☐ None

☒ Predatory Sexual Offenses 1974 ☐ Guilty but Mentally Ill

☐ Institutional Assaults City Jail ☒ Violent Crime with Injury or Death

☐ Sadism/Torture/Physical Cruelty City Jail ☒ Assaultive Pattern

☐ Screening Date 1/1/74 ☒ Belligent to Authority

☐ Co-Defendant/Enemy in System: 1/1/74 ☒ Homosexual Tendencies

☐ Poor Prior Adjustment 1/1/74 ☒ Predatory

☐ Deficient Coping Skills 1/1/74 ☒ Passive

STATISTICAL VIOLENCE RISK

Violence Prediction: ☒ Very High ☐ High ☐ Middle ☐ Low ☐ Very Low ☐ Insuf. Data

Property Prediction: ☒ High ☐ Middle ☐ Low ☐ Insuf. Data

☒ Number of Prior Prison Terms 2 ☐ Number of Adult Probations

Juvenile Record ☐ Before Age 15 ☐ Commitment ☐ Probation ☐ Age at 1st Arrest

☐ Married at Offense or Prior ☐ Current ☒ Never

☒ Instant Offense Assaultive Very High ☐ Notice of Very High or High Risk

☐ Sent N/A

AROLE CONTRACT

Accepted ☐ Not Eligible (EXPLAIN BELOW) ☐ Declined by Client ☐ Objectives:

COMMENTS:

COPIED FOR
COPIED FOR

DISTRIBUTION: White - Institution; Green - Counselor; Canary - Lansing
Pink - P.S.U.; Golden Rod - Data Systems

RECEPTION & GUIDANCE CENTER
RECOMMENDATIONS

EFFECTIVE DATE

PLACEMENT

RECOMMENDED BY

☒ MAX ☐ CLOSE ☐ MED ☐ MIN
☒ SEGR - ADMIN/PROTECTION

By Authority PD-BCF 34.01

TRANSFER AS INDICATED ABOVE IS HEREBY ORDERED

By Authority MCL 791.207

BIRTHDATE 02/02/53

CITIZENSHIP US

DATE OF INTERVIEW 11/10/80

BIRTHDATE 25

DEPENDENTS 00

DATE OF INTERVIEW

SOURCE CODES

I: Interview

T: Tests

PSI

IR: Institutional Record

CR: Community Record

I T P IR CR

Max. Time Docket No. Jurisdiction

☒ Assault ☐ Sex Offense

☐ Involved in Organized Crime

☐ None

☐ Back Aches

Special Diet/Medication (type)

Severe Psychological Problem/Hospitalization

Suicide Potential/Chronic Depression

Escape History ☐ None

☐ Adult Institution ☐ Close ☐ Medium ☐ Minimum

☒ Juvenile Institution 4 times

☐ AWOL

☒ Other (specify) Connections Center 1974

Policy Psych Case ☐ ☒ ☐ ☐

Mental Hospital Within 2 Years ☐ Adjustment Problems ☐ None

☒ Predatory Sexual Offenses 1974 ☐ Guilty but Mentally Ill

☐ Institutional Assaults City Jail ☒ Violent Crime with Injury or Death

☐ Sadism/Torture/Physical Cruelty City Jail ☒ Assaultive Pattern

☐ Screening Date 1/1/74 ☒ Belligent to Authority

☐ Co-Defendant/Enemy in System: 1/1/74 ☒ Homosexual Tendencies

☐ Poor Prior Adjustment 1/1/74 ☒ Predatory

☐ Deficient Coping Skills 1/1/74 ☒ Passive

Name

Number

Place

Name

Number

Place

Violence Prediction: ☒ Very High ☐ High ☐ Middle ☐ Low ☐ Very Low ☐ Insuf. Data

Property Prediction: ☒ High ☐ Middle ☐ Low ☐ Insuf. Data

☒ Number of Prior Prison Terms 2 ☐ Number of Adult Probations

Juvenile Record ☐ Before Age 15 ☐ Commitment ☐ Probation ☐ Age at 1st Arrest

☐ Married at Offense or Prior ☐ Current ☒ Never

☒ Instant Offense Assaultive Very High ☐ Notice of Very High or High Risk

☐ Sent N/A

AROLE CONTRACT

Accepted ☐ Not Eligible (EXPLAIN BELOW) ☐ Declined by Client ☐ Objectives:

COMMENTS:

COPIED FOR
COPIED FOR

DISTRIBUTION: White - Institution; Green - Counselor; Canary - Lansing
Pink - P.S.U.; Golden Rod - Data Systems

RECEPTION & GUIDANCE CENTER
RECOMMENDATIONS

EXHIBIT (F)

MICHIGAN DEPARTMENT OF CORRECTIONS
Reception & Guidance Center

PSYCHOLOGICAL REPORT

NAME	NUMBER	INTERVIEW
HARDIN, TYRONE	136097	DATE
		10/24/80
OFFENSE	TERM	AGE
		25

TYPE OF INTERVIEW:	<input type="checkbox"/> Take Diagnostic
	<input type="checkbox"/> Parole Board Pre-Release
	<input type="checkbox"/> Reduced Custody Screening
	<input type="checkbox"/> Discharge Evaluation
	<input checked="" type="checkbox"/> Crisis Intervention Contact
	<input type="checkbox"/> Other (Specify) _____

TESTS ADMINISTERED:	<input type="checkbox"/> MMPI	<input type="checkbox"/> Rorschach
	<input type="checkbox"/> DAP	<input type="checkbox"/> TAT
	<input type="checkbox"/> B-G	<input type="checkbox"/> Other (Specify) _____
	<input type="checkbox"/> ISB	
	<input type="checkbox"/> CPI	<input checked="" type="checkbox"/> None

Mr. Hardin was seen on an emergency basis when intake personnel noted information contained in the Sheriff's Questionnaire from the county jail which indicated that Mr. Hardin had experienced severe adjustment problems there. These problems included refusing to lock up, threatening to fight officers, flooding his cell, possession of a homemade gun, and at least one suicide attempt.

Upon interview Mr. Hardin stated that all of the above problems were part of his attempt to feign mental illness in an attempt to receive a lighter sentence or other special

privileges. He states that the suicide incident was not a bona fide attempt to hurt himself, but rather just one more manipulation on his part. He denies having had the gun in his possession, stating that another resident and officers "gave me the gun" so as to have further evidence against him. In March of this year, Mr. Hardin was found competent to stand trial by the Forensic Center, and was thus tried and sentenced 7 1/2-20y on a combination of violent, assaultive charges. At the time of this interview, Mr. Hardin is found to be without gross psychopathology, well-oriented in all three psychological spheres, and displaying intact remote and immediate memory. It is felt that Mr. Hardin's behavior at the county jail was indeed manipulative and not the result of significant psychotic disorganization. Mr. Hardin presents himself as an individual who leads a rather hedonistic lifestyle, seemingly without regard to the consequences of any of his actions. He has an extensive drug abuse history as well as an extensive criminal history, dating from his juvenile years. Records indicate that he has been in the community only three months during the past seven years, the rest of the time having been spent in various criminal institutions. Custody staff should be aware that Mr. Hardin tends to employ manipulative means, sometimes of a dangerous nature, in an attempt to meet his needs. He states that, having failed in his ploy to be named guilty but mentally ill, he currently plans no further disruption of institutional procedures. However, his crime involves an assault with a firearm upon law enforcement officials, and his general attitude indicates that Mr. Hardin has significant problems dealing with authority. Therefore, it is anticipated that he may encounter adjustment problems during

his incarceration, although this is the third time he has been here at Jackson.

Due to the problems encountered at the county jail, Mr. Hardin is being placed in a Toplock cell in R&GC. No Psychiatric Clinic referral is seen as appropriate at this time.

/s/ Diane B. Lothrop
Diane B. Lothrop, M.S.
Clinical Psychologist

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TYRONE VICTOR HARDIN,
Plaintiff,

v.

DENNIS STRAUB,
Defendant.

Civil No.
86CV75355DT

Hon. Robert E.
DeMascio

ORDER

(Filed February 26, 1987)

Plaintiff filed this pro se complaint pursuant to 42 U.S.C. § 1983. Plaintiff claims that he was placed in administrative segregation while incarcerated at the State Prison of Southern Michigan (SPSM) without a hearing as mandated in Michigan Department of Corrections Administrative Rule 791.4405. He requests monetary damages.

Plaintiff has been granted *in forma pauperis* status. Pursuant to 28 U.S.C. § 1915, a district court may *sua sponte* dismiss an *in forma pauperis* complaint before service on the defendants. *Brooks v. Dutton*, 751 F.2d 197, 199 (6th Cir. 1984). *See also Spruyette v. Walters*, 753 F.2d 498 (6th Cir. 1985), *cert. denied* 106 U.S. 788 (1986). The court may dismiss a case "if satisfied that the action is frivolous or malicious." *Harris v. Johnson*, 784 F.2d 222 (6th Cir. 1986). A complaint may be dismissed as frivolous only if "it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief." *Malone v. Colyer*, 710 F.2d 258, 260-61 (6th Cir. 1983).

The actions plaintiff complains of took place while he was incarcerated at SPSM. The complaint alleges that plaintiff was confined at SPSM in 1980 and 1981 and was transferred to the Marquette Facility in July 1981. Plaintiff is essentially alleging a personal injury under the civil rights statute which is governed by the Michigan three-year statute of limitations. *EEOC v. Detroit Edison*, 515 F.2d 301, 315 (6th Cir. 1975); *Marlowe v. Fisher Body*, 489 F.2d 1057, 1063 (6th Cir. 1973). Since plaintiff did not file this action until December 29, 1986 it is time barred.

NOW, THEREFORE, IT IS ORDERED that the complaint be dismissed as frivolous, pursuant to § 1915(d).

/s/ Robert DeMascio
Robert E. DeMascio
United States District Judge

Dated: FEB 26 1987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(Title omitted in printing)

Civil No. 86CV75355DT
Hon. Robert E. DeMascio

JUDGMENT
(Filed February 26, 1987)

This cause comes before for the court on a complaint filed pursuant to 42 U.S.C. § 1983, and the court having filed its Order,

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED

that plaintiff's complaint be and the same hereby is DISMISSED as frivolous, pursuant to 28 U.S.C. § 1915(d).

Dated at Detroit, Michigan, this 26th day of FEBRUARY, 1987.

/s/ Robert DeMascio
Robert E. DeMascio
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(Title omitted in printing)

Civil No. 86CV75355DT
Hon. Robert E. DeMascio

MOTION TO VACATE
(Filed March 16, 1987)

NOW COMES Tyrone Victor Hardin, Plaintiff, acting as his own attorney in *pro se* and moves this Honorable Cocut (sic) for an order pursuant to Rule 59(e) of the Federal Rules of Civil Procedure vacating the judgment of this court, entered on February 26, 1987, which dismissed Plaintiff's complaint. This motion is based on the papers and files in this matter and the memorandum of law attached hereto.

/s/ T. Victor Hardin

Tyrone Victor Hardin, in pro se

Dated: March 5, 1987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(Title omitted in printing)

Civil No. 86CV75355DT
Hon. Robert E. DeMascio

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
VACATE

(Filed March 16, 1987)

In *Gaine vs. Lane*, 790 F.2d 1299 (1986) the Court stated:

"It is well settled that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Citing: *Benson vs. Cady*, 761 F.2d 335, 338 (1985).

Also, in *Mitchell v. Beaubouef*, 581 F.2d 412 (1978): "If the complaint is deemed legally sufficient under this liberal standard appropriate to this type of case, then service of process on the defendant . . . is required pursuant to Fed. R. Civ P. 4 (a)."

In *Boyce v. Alizadun*, 595 F.2d 948, 952 (1979): "It is essential for the district court to find 'beyond doubt' and under any 'arguable' construction, 'both in law and in fact' of the substance of the plaintiff's claim that he would not be entitled to relief."

In the instant case in chief, this Honorable Court is precluded from dismissing the complaint under the civil rights statute which in (sic) governed by the Michigan three-year statute of limitations.

Generally, in civil actions the court must look to state law for the statute of limitations which applies in analogous state cause of action, since 1983 and 1985 do not contain their own limitations provision. *Kilgore v. City of Mansfield*, 679 F.2d 632 (1982).

In *Board of Regents v. Tomanio*, 446 U.S. 478, 100 S.Ct. 1790, 64 L. Ed 2d 440 (1980), the Supreme Court held: the question of whether a limitations period is tolled is an inherent aspect of the state statute of limitations. Since Federal Court must look to the state for the statute of

limitations in 1983 and 1985 actions, the courts are obligated to also apply state tolling statutes, as long as the result is not inconsistent with the constitution or Federal Law.

Michigan tolling statute provides, in pertinent parts: If the person first entitled to . . . bring an action is . . . imprisoned at the time his claim accrued, he . . . shall have one year after his disability is removed through death or otherwise, to . . . bring the action although the period of limitations has run.

To be deemed a disability, the imprisonment must exist at the time the claim accrued. M.C.L.A. 600. 585 (1),(3).

In *Hawkins v. Justin*, 109 Mich App. 743 (1981): The purpose of the statutory provision which tolls the limitations period in favor of persons imprisoned at the time of the accrual of their cause of action is to be recognized that persons in prison are under disability in that their freedom has been restricted and their access to the Judicial (sic) process has been impaired and to provide such persons with additional time to assert their legal rights. M.C.L.A. 600.585; M.S.A. 27A.5851.

The statute provision which tolls the limitations period in favor of persons imprisoned at the time of the accrual of their cause of action provides for a disability in favor of all who are incarcerated when a cause of action accrues and does not require a showing of special disability. M.C.L.A. 600. 5851; MSA 27A. 5851.

RELIEF

WHEREFORE, for all the foregoing reasons stated herein, plaintiff demands that this Honorable Court GRANT this Motion to Vacate and reverse the initial decision dismissing plaintiff's complaint under the three-year statute of limitations, which does not apply to plaintiff in this cause. As law and justice demands

Respectfully submitted,
/s/ T. Victor Hardin
Tyrone Victor Hardin, in pro se
#136097, 3201 Bemis Rd.
Ypsilanti, MI 48197

Dated: March 5, 1987

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(Title omitted in printing)

CIVIL ACTION NO. 86-5355

HONORABLE ROBERT E. DEMASCIO

ORDER

(Filed May 21, 1987)

This matter is before the court on plaintiff, Tyrone Victor Hardin's motion to vacate this court's February 26, 1987 judgment dismissing his civil rights action. It appearing to the court that plaintiff's motion was not filed until March 16, 1987 and is therefore untimely, Fed. R. Civ. P. 59(e); .

NOW, THEREFORE, IT IS ORDERED that plaintiff's motion to vacate be and the same hereby is DENIED.

/s/ Robert DeMascio
Robert E. DeMascio
United States District Judge

Dated: MAY 21, 1987

No. 87-1538

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(Title omitted in printing)

ORDER
(Filed Dec. 18, 1987)

Before: WELLFORD, NELSON and BOGGS, Circuit
Judges.

This pro se Michigan state prisoner appeals the district court's dismissal of his civil rights action, filed pursuant to 42 U.S.C. Section 1983. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and brief, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34.

Plaintiff alleged he was denied his fifth, eighth, and fourteenth amendment rights when he was placed in solitary confinement in 1980 and 1981 while incarcerated at the State Prison of Southern Michigan. The district court concluded that the suit was time-barred and dismissed it pursuant to 28 U.S.C. Section 1915(d).

No. 87-1538

Upon examination of the record, we conclude that the district court was correct in finding plaintiff's claim barred by Michigan's statute of limitations. M.S.A. 27A.5805(8) limits the time in which personal injury actions may be brought to three years. This statute governs constitutional claims under section 1983 as well. *Wilson v. Garcia*, 471 U.S. 261, 276 (1985). Plaintiff filed an

action on December 29, 1986 for injuries alleged to have occurred in 1980 and 1981. This late filing puts plaintiff's claim outside the terms of the Michigan statute, and the three year period may not be tolled in prisoner section 1983 claims. *Higley v. Michigan Department of Corrections*, No. 86-1688 (6th Cir., December 15, 1987).

The district court correctly dismissed plaintiff's claim, and therefore we AFFIRM the decision of the district court. Rule 9(b)(5), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE
COURT

/s/ Illegible
Clerk

No. 87-1538

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(Title omitted in printing)

ORDER

(Filed February 18, 1988)

BEFORE: WELLFORD, NELSON and BOGGS, Circuit
Judges

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE
COURT

/s/ John P. Hehman
John P. Hehman, Clerk

SUPREME COURT OF THE UNITED STATES

No. 87-7023

Tyrone Victor Hardin

Petitioner

v.

Dennis Straub

ON PETITION FOR WRIT OF CERTIORARI TO THE United States Court of Appeals for the Sixth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted is limited to Question 1 presented by the petition.

October 11, 1988

SUPREME COURT OF THE UNITED STATES

No. 87-7023

Tyrone Victor Hardin

Petitioner

v.

Dennis Straub

ON CONSIDERATION of the motion of petitioner
for appointment of counsel,

IT IS ORDERED by this Court that the said motion
be, and the same is hereby, granted and it is ordered that
Douglas R. Mullkoff, Esquire, of Ann Arbor, Michigan, is
appointed to serve as counsel for the petitioner in this
case.

November 14, 1988

